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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

**MOR3334P0991US**

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**No. EV 577693960 US on March 1, 2006**

Signature \_\_\_\_\_

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Application Number

**10/782,273**

Filed

**February 19, 2004**

First Named Inventor

**GRILLIOT, William L.**

Art Unit

**3765**

Examiner

**Hoey, Alissa L.**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number **24,103**

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 **24,103**

  
Signature

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Typed or printed name

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Telephone number

**March 1, 2006**

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of **one** forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**Attachment to Pre-Appeal  
Brief Request for Review for  
Application No. 10/782,273**

The panel is requested to withdraw the rejection of claims 1 through 5, 7 through 13, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Aldridge (US 5,933,865).

By the amendments filed August 27, 2005, each independent claim has been amended to recite that the protective garment is "wearable with either shell facing outwardly while the other shell faces inwardly[.]"

The undersigned attorney submits that no plausible manipulation of the garment of Aldridge would allow said garment to be worn with the inside of the inner liner 14 facing outwardly while the body portion 16 of the outer shell 12 faced inwardly. It would be highly implausible, if not impossible, and nothing would motivate a wearer to remove the inner liner 14 from the outer shell 12, to reverse the inner liner 14 so that its inside faced outwardly, and to stuff the outer shell 12 into the inner liner 14, so reversed. Likely, the outer shell 12 would not fit into the inner liner 14, so reversed, without causing the garment, so manipulated, to become unwearable.

Thus, even if it is assumed *arguendo* that the inner liner 14 of the protective garment of Aldridge is a shell, a person having ordinary skill in the art (to whom claim terminology is addressed) would not regard the garment of Aldridge as being "wearable with either shell facing outwardly while the other shell faces inwardly[.]" It follows that a person having ordinary skill in the art would not regard the garment of Aldridge as being capable of being used in the method claimed in any of the independent claims, as amended, or in any of the dependent claims.

Claim 5, upon which claims 7 and 8 depend, and claim 13, upon which claims 15 and 16 depend, recite, similarly, that "the shell of low visibility displays camouflage[.]" Nothing in Aldridge suggests that the inside of the inner liner 14 displays or might display camouflage.

Moreover, each independent claim has been amended, similarly, so as to recite

wherein, if a tactical situation, in which a need for low visibility overrides a need for high visibility, develops or is expected to develop, the military or paramilitary firefighter or emergency worker wearing the protective garment with the shell of high visibility facing outwardly and with the shell of low visibility facing inwardly is motivated to doff the protective garment, to reverse the protective garment, and to re-don the protective garment with the shell of low visibility facing outwardly and with the shell of high visibility facing inwardly.

In the Office Action dated December 2, 2005, the patent examiner wrote in connection with the garment of Aldridge that "[t]he military or paramilitary firefighter or emergency worker wearing the protective garment with the shell of high visibility facing outwardly is capable of being motivated to doff the protective garment, to reverse the protective garment, and to re-don the protective garment with the shell of low visibility facing outwardly."

The undersigned attorney submits, respectfully, that a person being capable of being motivated is not tantamount to the person being motivated. In any event, since the garment of Aldridge is not "wearable with either shell facing outwardly while the other shell faces inwardly," a military or paramilitary firefighter or emergency worker wearing the protective garment of Aldridge with the body portion 16 of the outer shell 12 facing outwardly could not be so motivated.

The undersigned attorney submits, therefore, that the independent claims, as amended, and the dependent claims should be now allowable. The undersigned attorney solicits their allowance.

Respectfully submitted,

By Allen J. Hoover  
Allen J. Hoover  
Reg. No. 24,103

March 1, 2006